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## Comments

# Pakistan's General Pervez Musharraf: Deceitful Dictator or Father of Democracy?

Terence N. Cushing\*

*"I'm a soldier, frankly, I believe in destiny, and I'm not afraid."<sup>1</sup>  
Pakistani President General Pervez Musharraf*

## I. Introduction

In October 1999, General Pervez Musharraf assumed the title of Chief Executive of Pakistan after a bloodless military takeover.<sup>2</sup> After the coup, General Musharraf suspended the Pakistani Constitution, dissolved Parliament, and appointed an eight-member National Security Council as the premier governing body.<sup>3</sup> This comment provides an in-depth analysis of the legal and political ramifications of General Pervez

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1. CNN, *Transcript of CNN Interview with Musharraf*, at <http://www.cnn.com/2002/WORLD/asiapcf/south/06/01/musharraf.transcript/index.html> (last visited Apr. 20, 2003) [hereinafter "*Transcript of Interview*"].

2. Central Intelligence Agency, *The CIA World Factbook – Pakistan*, at <http://www.cia.gov/cia/publications/factbook/geos/pk.html> (last visited Oct. 26, 2001)[hereinafter "*Central Intelligence Agency*"]. See also Sean D. Murphy, *U.S. Reaction to Military Coup in Pakistan*, 94 AM. J. INT'L L. 354 (2000).

3. Central Intelligence Agency, *supra* note 2.

Musharraf's rise to power and his subsequent suspension of the Constitution of the Islamic Republic of Pakistan. Further, this comment examines the repercussions of these events, with the focus being on the legal consequences of these sudden changes, and whether the General's reign has served to improve, or hinder, Pakistan's promised march toward democracy.

Pakistan has been thrust into the global spotlight as a result of the terrorist attacks in the United States on September 11, 2001. The United States asked General Musharraf to play a key role in America's fledgling war against terrorism. Yet, as a bordering state of Afghanistan, and with a population of 145 million, ninety-seven percent of which are Muslim, Pakistan found itself in the unenviable position of having to choose whether to continue to ally itself with the Taliban, its turbulent, staunchly Islamic neighbor, or to cooperate with the influential United States in its steadfast determination to extinguish terrorism.<sup>4</sup> To avert a potential civil war, General Musharraf must massage the fears of Pakistan's overwhelmingly Muslim population, many of who remain loyal to extremist Muslim groups such as the Taliban.

This comment examines how the recent terrorist events in the United States have affected, and may affect, Pakistan, considering its current status as a state without an operating Constitution. Additionally, this comment will explore how the ongoing hunt for Osama bin Laden has dictated, and will continue to dictate, many of Musharraf's political and military decisions.

## II. Musharraf's Coup d'Etat and Its Constitutionality

Determined not to submit to then Prime Minister Nawaz Sharif's plan to fire him as the leader of Pakistan's military, General Pervez Musharraf returned from his army visit to Sri Lanka on October 12, 1999, and in a bloodless coup, immediately ordered the Pakistani military to arrest Sharif.<sup>5</sup> However, the General's return was not without near catastrophe. Suspicious of the General's motives, Sharif refused to allow Musharraf's plane, carrying 198 passengers, to land.<sup>6</sup> Finally, the jet did touch down, at Musharraf's insistence, with only seven minutes worth of fuel remaining.<sup>7</sup> The General averted disaster and commenced

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4. See Insight on the News, *Pakistan's Leader Vows to Establish Democracy*, at [http://www.findarticles.com/cf\\_0/m1571/16\\_17/74337137/p1/article.jhtml?term=musharraf+and+de+borchgrave](http://www.findarticles.com/cf_0/m1571/16_17/74337137/p1/article.jhtml?term=musharraf+and+de+borchgrave) (April 30, 2001).

5. See Murphy, *supra* note 2.

6. *Id.*

7. CNN, *Pakistan: Sharif's Family Says Verdict a 'Vendetta,'* at <http://www.cnn.com/2000/ASIANOW/south/04/07/pakistan.sharif.reax/index.html> (Dec. 10, 2000) [*hereinafter* "Verdict"].

what was to be a highly watched and embattled leadership of precarious Pakistan. The coup was the fourth overthrow in Pakistan's short history.<sup>8</sup>

To begin with, Musharraf alleged that Prime Minister Sharif, elected by receiving two-thirds of the vote, had engaged in a number of unsavory tactics, which led to Musharraf's hostile, yet civilized, takeover.<sup>9</sup> In addition to his attempt to prevent a planeload of passengers from safely landing, Sharif's administration accrued allegations of corruption and incited controversy when Sharif dismissed the Supreme Court's Chief Justice.<sup>10</sup> For his role in the incident concerning Musharraf's jet, Sharif earned two life sentences.<sup>11</sup> Convicted of both hijacking and terrorism,<sup>12</sup> Sharif avoided imprisonment and remains in Saudi Arabia where he is satisfying a ten-year exile imposed by Musharraf.<sup>13</sup> With alacrity, Musharraf declared a state of emergency and suspended the Pakistani Constitution ("Constitution")<sup>14</sup> and issued a Proclamation of Emergency of October 14, 1999, in which he boldly announced: "[T]he whole of Pakistan will come under the control of the Armed Forces of Pakistan."<sup>15</sup>

8. Murphy, *supra* note 2.

9. See *Verdict*, *supra* note 7.

10. *Id.*

11. See *Verdict*, *supra* note 7.

12. CNN, *Pakistani High Court Upholds Military Coup*, at <http://www.cnn.com/2000/ASIANOW/south/05/12/pakistan.sharif.02/index.html> (May 13, 2000) [hereinafter "*High Court*"].

13. See Anthony Spaeth, *Dangerous Ground: Can Pakistan's Dictator Pervez Musharraf, A Battle-Tested Soldier, Survive the Political Minefield that Lies Before Him?*, TIME MAGAZINE (Nov. 1, 2002), at <http://www.time.com/time/asia/covers/1101020722/story.html> See also CNN, *Musharraf Bars Predecessors from PM Role*, at <http://www.cnn.com/2002/WORLD/asiapcf/south/07/07/musharraf.pm/index.html> (July 7, 2002).

14. Murphy, *supra* note 2.

15. Proclamation of Emergency (1999), at [http://www.pakistani.org/pakistan/constitution/post\\_12oct99/proclamation\\_of\\_emergency\\_14oct1999.orig.html](http://www.pakistani.org/pakistan/constitution/post_12oct99/proclamation_of_emergency_14oct1999.orig.html) (last visited Nov. 25, 2001). The proclamation provides:

In pursuance of deliberations and decisions of Chiefs of Staff of the Armed Forces and Corps Commanders of Pakistan Army, I, General Pervez Musharraf, Chairman Joint Chiefs of Staff Committee and Chief of Army Staff, proclaim emergency throughout Pakistan and assume the office of the Chief Executive of the Islamic Republic of Pakistan.

I hereby order and proclaim as follows:

- (a) The Constitution of the Islamic Republic of Pakistan shall remain in abeyance;
- (b) The President of Pakistan shall continue in office;
- (c) The National Assembly, the Provincial Assemblies, and Senate shall stand suspended;
- (d) The Chairman and Deputy Chairman of the Senate, the Speaker and Deputy Speaker of the National Assembly and the Provincial Assemblies shall stand suspended;

Following his proclamation, Musharraf issued a Provisional Constitutional Order ("Provisional Constitution") to replace the suspended Constitution.<sup>16</sup> The Provisional Constitution pledges that

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(e) The Prime Minister, the Federal Ministers, Ministers of State, Advisors to the Prime Minister, Parliamentary secretaries, the Provincial Governors, the Provincial Chief Ministers, the Provincial Ministers and the Advisors to the Chief Ministers shall cease to hold office;

(f) The whole of Pakistan will come under the control of the Armed Forces of Pakistan.

This proclamation shall come into force at once and be deemed to have taken effect on and 12th day of October, 1999.

*Id.*

16. Provisional Constitution Order No. 1 of 1999, at [http://www.pakistani.org/pakistan/constitution/post\\_12oct99/pcol\\_1999.html](http://www.pakistani.org/pakistan/constitution/post_12oct99/pcol_1999.html) (last visited Nov. 25, 2001)[hereinafter "Provisional Constitution"]. The Provisional Constitution Order provides:

In pursuance of Proclamation of the 14th day of October, 1999, and in exercise of all powers enabling him in that behalf, the Chairman Joint Chiefs of Staff Committee and Chief of Army Staff and Chief Executive of the Islamic Republic of Pakistan under the Proclamation of Emergency of 14th day of October 1999 (hereinafter referred to as the Chief Executive) is pleased to make and promulgate the following Order:

1. (1) This Order may be called Provisional Constitution Order No.1 of 1999; (2) It extends to the whole of Pakistan; (3) It shall come into force at once.

2. (1) Notwithstanding the abeyance of the provisions of the Constitution of the Islamic Republic of Pakistan, hereinafter referred to as the Constitution, Pakistan shall, subject to this Order and any other Orders made by the Chief Executive, be governed, as nearly as may be, in accordance with the Constitution.

(2) Subject as aforesaid, all courts in existence immediately before the commencement of this Order, shall continue to function and to exercise their respective powers and jurisdiction provided that the Supreme Court or High Courts and any other court shall not have the powers to make any order against the Chief Executive or any person exercising powers or jurisdiction under his authority;

(3) The Fundamental Rights conferred by Chapter I of Part II of the Constitution, not in conflict with the Proclamation of Emergency or any Order made thereunder from time to time, shall continue to be in force.

(4) Notwithstanding anything contained in the Proclamation of the 14<sup>th</sup> day of October, 1999 or this Order or any other law for the time being in force, all provisions of the Constitution of the Islamic Republic of Pakistan embodying Islamic injunctions including Article 2, 2A, 31, 203A to 203J, 227 to 231 and 260 (3) (a) and (b) shall continue to be in force and no provision as aforesaid shall remain in abeyance or be deemed to have remained in abeyance at any time.

3. (1) The President shall act on, and in accordance with the advice of the Chief Executive;

(2) The Governor of the Province shall act on, and in accordance with the instructions of the Chief Executive.

4. (1) No Court, Tribunal or other authority shall call or permit to be called in question the proclamation of Emergency of 14th day of October, 1999

Pakistan will be governed as nearly as possible in accordance with the Constitution.<sup>17</sup> If nothing else, the attempt to mirror the Constitution as closely as practical, shows Musharraf's proclivity towards a non-hostile transition of power and bolsters the credibility of his promises to transform a virtual dictatorship into a burgeoning democracy.

Moreover, Musharraf appointed himself Chief Executive and created an eight-member National Security Council, which serves as Pakistan's chief governing body.<sup>18</sup>

Categorized by analysts as a political moderate determined to improve Pakistan's economy, Musharraf has promised that the intended result of the coup is to restore civilian rule.<sup>19</sup> As for the Pakistani Supreme Court ("Supreme Court"), the Provisional Constitution provides that all courts in existence prior to the coup shall remain in existence and continue to exercise their authority, so long as their authority does not conflict with the supreme authority of the Chief Executive.<sup>20</sup>

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or any Order made in pursuance thereof.

(2) No judgment, decree, writ, order or process whatsoever shall be made or issued by any court or tribunal against the Chief Executive or any authority designated by the Chief Executive.

5. Notwithstanding the abeyance of the provisions of the Constitution, but subject to the Orders of the Chief Executive, all laws other than the Constitution, all Ordinances, Orders, Rules, Bye-laws, Regulation, Notifications and other legal instruments in force in any part of Pakistan whether made by the President or the Governor of the Province, shall continue in force until altered, amended or repealed by the Chief Executive or any authority designated by him.

5A.(1) An Ordinance promulgated by the President or by the Governor of the Province shall not be subject to the limitation as its duration prescribed in the Constitution.

(2) The provisions of clause (1) shall also apply to an Ordinance issued by the President or by the Governor which was in force immediately before the commencement of the Proclamation Order of Chief Executive of the Fourteenth day of October, 1999.

6. The Proclamation of Emergency issued on 28th day of May 1998, shall continue but subject to the provisions of Proclamation of Emergency dated 14th day of October 1999 and this Provincial Constitution Order and any other Order made thereunder.

7. All persons who, immediately before the commencement of this Order, were in the service of Pakistan as defined in Article 260 of the Constitution and those persons who immediately before such commencement were in office as Judge of the Supreme Court, the Federal Shariat Court or a High Court or Chief Election Commissioner or Auditor-General or Ombudsman and Chief Ehtesab Commissioner, shall continue in the said service on the same terms and conditions and shall enjoy the same privileges, if any.  
*Id.*

17. *Id.*

18. Central Intelligence Agency, *supra* note 2.

19. CNN, *General Pervez Musharraf, President and Chief Executive of Pakistan*, at <http://www.cnn.com/2001/WORLD/asiapcf/south/06/20/musharraf.biog/index.html> (June 28, 2001).

20. Provisional Constitution, *supra* note 16.

Despite this lack of enforceable authority, the Supreme Court issued a mandate requiring Musharraf to relinquish executive and legislative authority by October 12, 2002, the three-year anniversary of the coup.<sup>21</sup> The Supreme Court ruled, much to Musharraf's content, that "state necessity" compelled Musharraf to wrestle control of the country from Sharif and place the Constitution in abeyance.<sup>22</sup> Yet, the Supreme Court ruling *only* validated Musharraf's Provisional Constitution, for as long as the Constitution is suspended; the ruling did *not* validate Musharraf's actions as legal under the Constitution.<sup>23</sup> As a result, Musharraf risks persecution at the whim of any future Pakistani government should it deem his suspension of the Constitution to be illegal.<sup>24</sup> In fact, "nothing binds [a subsequent government] to respectful behaviour towards the military men who deviated from the Constitution."<sup>25</sup> The Provisional Constitution further mandates that no Court may question the Order that produced the Provisional Constitution or render any "judgment, decree, writ, order[,] or process whatsoever" against the Chief Executive.<sup>26</sup> The Supreme Court's order to convert Pakistan to a democracy by October 2002 endured as unenforceable decree, although Musharraf himself had largely pledged to obey the order.<sup>27</sup>

Perhaps sensing the need for additional time, the General has asserted that he wants "to restore real democracy, the essence of democracy, and not sham democracy for privileged people."<sup>28</sup> In attempts to restore real democracy, Musharraf outlined an agenda that stressed seven major initiatives: rebuilding national confidence and morale; removing inter-provincial disharmony and restoring national cohesion; reviving the economy and restoring investors' confidence; ensuring law, order, and speedy justice; strengthening and de-politicizing state institutions; devolving more power to the grassroots level; and imposing across-the-board accountability.<sup>29</sup> In addition, Musharraf placed high priority on eradicating corruption and "punishing those

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21. See Central Intelligence Agency, *supra* note 2.

22. See *High Court*, *supra* note 12.

23. See M.B. Naqvi, *Options for Musharraf*, Defence Journal, at <http://www.defencejournal.com/globe/2000/sep/options.htm>. (emphasis added)(last visited Oct. 26, 2001).

24. See *id.*

25. *Id.*

26. Provisional Constitution, *supra* note 16.

27. Naqvi, *supra* note 23.

28. See Asian Political News, *Musharraf Gives District Governments to Pakistan*, at [http://www.findarticles.com/cf\\_0/m0WDQ/2000\\_August\\_21/64528204/p1/article.jhtml?term=Musharraf](http://www.findarticles.com/cf_0/m0WDQ/2000_August_21/64528204/p1/article.jhtml?term=Musharraf) (August 21, 2000).

29. See South Asia Monitor, *Pakistan: Musharraf's First Hundred Days*, at <http://www.csis.org/saprogram/sam19.html> (March 1, 2000).

responsible for plundering state banks.”<sup>30</sup>

Further, the General also declared 2000 the Year of Human Rights in Pakistan, and singled out the practice of “honor killings,” the traditional method for dealing with so-called irreverent behavior of female family members that purportedly brings dishonor to the men of her respective family.<sup>31</sup> Using strong language, Musharraf made clear that the new government “‘vigorously condemned the practice of . . . honor killings’” and that “‘killing in the name of honor is murder, and it will be treated as such.’”<sup>32</sup>

Despite democratic assurances such as these, Musharraf's administration has not yet come full circle from a dictatorial takeover to a representative democracy, especially in terms of human rights. During the summer of 2001, a highly publicized case involving a twenty-one year old woman, whose husband doused her with acid, caught the attention of human rights activists.<sup>33</sup> The woman, disfigured by her husband's intentional abuse, sought to travel to Italy to undergo plastic surgery to repair the scarring.<sup>34</sup> Musharraf's government refused to allow her to leave the country to receive the much-needed medical treatment, citing concern over Pakistan's image should word spread throughout the world of this horrific incident.<sup>35</sup> The incident had come on the heels of accusations that Pakistan had fostered an environment of widespread mistreatment of women,<sup>36</sup> and statistics that revealed, as of 1998, only twenty-nine percent of women were literate, as opposed to over fifty-five percent of men.<sup>37</sup>

On the other hand, Musharraf has made several significant strides with respect to the plight of Pakistani women, and appointed a prominent female social worker to serve as Director of Education, Science, and Technology.<sup>38</sup> In addition, he passed human rights legislation designed to allow the arrest of any perpetrators of honor killings.<sup>39</sup> Such laudable

30. *High Court*, *supra* note 12.

31. See Rachel A. Ruane, *Murder in the Name of Honor: Violence Against Women in Jordan and Pakistan*, 14 EMORY INT'L L. REV. 1523 (2000).

32. *Id.* at 1548.

33. Asian Political News, *Author Says Pakistan Bars Acid-Burned Woman from Treatment*, at [http://www.findarticles.com/cf\\_0/m0WDQ/2001\\_June\\_18/75831473/p1/article.jhtml?term=Musharraf](http://www.findarticles.com/cf_0/m0WDQ/2001_June_18/75831473/p1/article.jhtml?term=Musharraf) (June 18, 2001) [hereinafter “Pakistan Bars”].

34. *Id.*

35. *Id.*

36. *Id.*

37. Central Intelligence Agency, *supra* note 2.

38. See CNN, *Musharraf Won't Set Timetable to Restore Democracy in Pakistan*, at <http://europe.cnn.com/ASIANOW/south/9911/04/pakistan.musharraf/> (November 5, 1999).

39. Ruane, *supra* note 31 at 1548.



attempts to cure Pakistan's societal ills are encouraging as Musharraf continues to stress his intent to comply with the Supreme Court's mandate for democracy and improve Pakistan's image throughout the world.

Image, however, may be the least of Musharraf's worries. Having dismissed Parliament, Musharraf's critical dilemma quickly became how to meet the Supreme Court's October 2002 deadline of creating democratic processes, and yet avoid the chance that the new Parliament would summarily reinstate the Constitution and sentence him and his supporters to prison.<sup>40</sup> Of interest to Musharraf is the sobering fact that no Pakistani president (a position to which he later appointed himself in June 2001) has ever turned over power "ceremoniously."<sup>41</sup> According to the *South Asia Monitor*:

In the past, Pakistan's military governments have promised-and have initially delivered-more orderly governance and improved administration. Generals operate efficiently within the strongly hierarchical structure of the military; however, the same qualities that make them strong military commanders can make them weak civil administrators. They are used to giving orders. They are not used to handling different and disagreeing points of view, much less the rough and tumble of open politics.<sup>42</sup>

In fact, Musharraf barely escaped certain death on April 26, 2001, when a car bomb failed to detonate as his motorcade sped past a rigged vehicle.<sup>43</sup> Pakistani officials arrested a member of the Pakistan Rangers, the nation's civil armed forces, and two others in connection with the failed assassination plot.<sup>44</sup> While Musharraf may boast that "I'm a soldier, frankly, I believe in destiny, and I'm not afraid[,]""<sup>45</sup> a close friend volunteered that "[h]e should be scared -- he is scared."<sup>46</sup>

### III. March Towards Democracy or the Making of a Dictatorial Regime?

Widespread constituent support is most often linked to the

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40. Naqvi, *supra* note 23.

41. See Asian Political News, *Musharraf Takes Oath as Pakistani President*, at [http://www.findarticles.com/cf\\_0/m0WDQ/2001\\_June\\_23/76143573/p1/article.jhtml?term=Musharraf](http://www.findarticles.com/cf_0/m0WDQ/2001_June_23/76143573/p1/article.jhtml?term=Musharraf) (June 23, 2001) [hereinafter "*Musharraf Takes Oath*"].

42. South Asia Monitor, *supra* note 29.

43. CNN, *Man Charged in Musharraf Assassination Plot*, at <http://www.cnn.com/2002/WORLD/asiapcf/south/07/09/pakistan.plot/index.html> (July 9, 2002). Allegedly, the van used in the assassination attempt was retrieved and may have been used in the bombing outside the United States Consulate in Karachi on June 14, 2002. *Id.*

44. *Id.*

45. *Transcript of Interview*, *supra* note 1.

46. Spaeth, *supra* note 13.

perception, rather than the reality, of an administration's successes. Foiled suicide plots and ubiquitous protests by Islamic militants often garner all the attention, yet Musharraf continues, sometimes quietly, to implement his plan to return plagued Pakistan to democratic rule. So how has General Musharraf done, according to both foreign and domestic observers, with respect to the lofty promises he made over three years ago? According to the CIA, too little has changed despite good intentions for improving the economy.<sup>47</sup>

Earlier this year, Musharraf detained hundreds of activists demanding democratic elections and the restoration of democracy, much to the displeasure of those thirsty for signs of democratic safeguards.<sup>48</sup> Yet Musharraf has stood by what he believes to be the successes of his government by asserting that the "plundering of national wealth" by former administrations has been halted and the economy has recovered nicely.<sup>49</sup> Musharraf reminds cynics that he did, after all, inherit an astronomical debt of nearly forty billion dollars upon claiming power.<sup>50</sup>

Despite the successes Musharraf references, some critics suggest that when he appointed himself President in the summer of 2001, just before his trip to India for negotiations regarding the on-going Kashmir territorial dispute, Musharraf gave himself even greater clout, seemingly pushing Pakistan further away from an increasingly elusive democracy.<sup>51</sup> But perhaps greater clout is precisely what Musharraf must wield in order to install a democratic government. Critics balked once again when Musharraf shuffled his National Security Council in an attempt to seat a more permanent council, one that would last beyond the election period next October, possibly in an effort to show a willingness to comport with the Supreme Court deadline.<sup>52</sup>

47. See Central Intelligence Agency, *supra* note 2.

48. See Asian Political News, *Pakistan Detains Nearly 800 Activists, Seals May Day Venue*, at [http://www.findarticles.com/cf\\_0/m0WDQ/2001\\_May\\_7/74265525/p1/article.jhtml?term=Musharraf](http://www.findarticles.com/cf_0/m0WDQ/2001_May_7/74265525/p1/article.jhtml?term=Musharraf) (May 7, 2001).

49. Asian Political News, *Foreign Forces Trying to Destabilize Pakistan: Musharraf*, at [http://www.findarticles.com/cf\\_0/m0WDQ/2000\\_Oct\\_16/66471943/p1/article.jhtml?term=Musharraf](http://www.findarticles.com/cf_0/m0WDQ/2000_Oct_16/66471943/p1/article.jhtml?term=Musharraf) (Oct. 16, 2000).

50. See Asian Political News, *India Prepares to Receive Pakistan's Musharraf*, at [http://www.findarticles.com/cf\\_0/m0WDQ/2001\\_July\\_16/77057925/p1/article.jhtml?term=Musharraf](http://www.findarticles.com/cf_0/m0WDQ/2001_July_16/77057925/p1/article.jhtml?term=Musharraf) (July 16, 2001).

51. See Asian Political News, *Musharraf Presidency Challenged in Pakistani Court*, at [http://www.findarticles.com/cf\\_0/m0WDQ/2001\\_June\\_23/76143609/p1/article.jhtml?term=musharraf+presidency+challenged](http://www.findarticles.com/cf_0/m0WDQ/2001_June_23/76143609/p1/article.jhtml?term=musharraf+presidency+challenged). See also *Musharraf Takes Oath*, *supra* note 39. Pakistan has fought, and continues to fight, a long, bloody, religious and territorial war over the Kashmir region held by largely Hindu India.

52. See Asian Political News, *Musharraf Reconstitutes National Security Council*, at

By August of 2001, Musharraf had outlined his latest plan for restoring democracy in the Islamic Republic.<sup>53</sup> During the summer of 2001, his government held democratic elections for 102 district governments.<sup>54</sup> Specifically, the regime replaced deputy commissioners, holdovers of British rule who were often referred to as “the king of the district and fountain of all corruption,” with democratically elected administrators.<sup>55</sup> As for national and provincial elections, Musharraf promised a three-phase electoral process, starting with the two houses of Parliament, the Senate and National Assembly, and the four provincial assemblies.<sup>56</sup> Soon after, elections for speakers and deputy speakers of the assemblies would be held and national and provincial governments would be created.<sup>57</sup>

While Musharraf seemed to be embracing the call for democracy in Pakistan, he had not wholeheartedly embraced the West and Western values. Musharraf believes that Muslims are angry with the West because, in part, of the morally bankrupt motion pictures released by Hollywood.<sup>58</sup> Further, Musharraf cites a “pattern of attacks” on Muslims in various parts of the world, including Chechnya and Iraq.<sup>59</sup> Musharraf balances his words between democracy and dictatorship; Muslim extremists and those seeking to eradicate terrorism; and iron-fisted proclamations and compromise. As exemplified in his statements regarding the West, Musharraf recognizes the frustration many Muslims feel when they look at the western world, yet he seems to wish that their myopic perspectives were coupled with his voiced disdain for terrorism.

Musharraf continued to press forward, and in April of 2002, Pakistan’s National Security Council and Federal Cabinet agreed to hold a national referendum to extend Musharraf’s presidency another five years.<sup>60</sup> In effect, the October deadline set by the Supreme Court would only remain in order to hold legislative elections.<sup>61</sup> Thus, the

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[http://www.findarticles.com/cf\\_0/m0WDQ/2001\\_July\\_9/76664488/p1/article.jhtml?term=Musharraf](http://www.findarticles.com/cf_0/m0WDQ/2001_July_9/76664488/p1/article.jhtml?term=Musharraf) (July 9, 2001).

53. Asian Political News, *Musharraf Announces Elections for Oct. 2002*, at [http://www.findarticles.com/cf\\_0/m0WDQ/2001\\_August\\_20/78374980/p1/article.jhtml?term=Musharraf](http://www.findarticles.com/cf_0/m0WDQ/2001_August_20/78374980/p1/article.jhtml?term=Musharraf) (August 20, 2001)[*hereinafter* “*Musharraf Announces Elections*”].

54. *Id.*

55. *Id.*

56. *Id.* See also Central Intelligence Agency, *supra* note 2 (outlining governmental structure of Pakistan).

57. *Musharraf Announces Elections*, *supra* note 53.

58. Insight on the News, *supra* note 4.

59. *Id.*

60. See CNN, *Musharraf Poll Plan to be Unveiled*, at <http://www.cnn.com/2002/WORLD/asiapcf/south/04/03/pakistan.referendum/index/html> (April 3, 2002)[*hereinafter* “*Musharraf Poll Plan*”].

61. *Id.*

referendum, designed to solidify Musharraf's hold on power, would reduce the October deadline to political jockeying for Musharraf, rather than a fight for his political life.<sup>62</sup> The referendum, in effect, would frustrate the traditional method of electing Pakistan's president, whereby voters elect the members of the two houses of parliament, who in turn select the president.<sup>63</sup> As such, Musharraf bypasses the legislature in his bid to remain president via referendum, and prevents exiled Prime Minister Benazir Bhutto, of the Pakistan's People's Party, from any planned run for the presidency in October 2002.<sup>64</sup> To further bury Bhutto's political aspirations, Musharraf maintains that if Bhutto re-enters the country, she will be arrested and face trial on the charges pending against her.<sup>65</sup>

Not surprisingly, Musharraf faced significant opposition from his referendum plan, largely from the ousted leaders, Bhutto and Sharif, and their respective political parties, the Pakistan People's Party and the Pakistan Muslim League,<sup>66</sup> whose candidates were expected to dominate the October elections.<sup>67</sup> Musharraf attempted to quell the outrage by reiterating his pledge to return Pakistan to democracy by the October 2002 deadline.<sup>68</sup> Further, he asserted that the referendum would create a more stable political situation, ensure economic certainty, secure a mandate for his reforms, and assist the war on terrorism.<sup>69</sup>

The referendum asked:

"For the continuation of the local government system, restoration of democracy, sustainability and continuation of reforms, elimination of sectarianism and extremism[,] and completion of Quaid-I-Azam's [refers to the founder of Pakistan] concept, do you want to elect President General Pervez Musharraf for the next five years as

62. *See id.*

63. *Id.* *See also* CNN, *Mass Rally for Musharraf*, at <http://www.cnn.com/2002/WORLD/asiapcf/south/04/09/pakistan.campaign/index/html> (April 9, 2002)[*hereinafter* "*Musharraf Rally*"].

64. *See Musharraf Poll Plan*, *supra* note 60.

65. *See* [Indiainfo.com](http://news.indiainfo.com/spotlight/mushabid/15bhutto.html), *Musharraf Threatens Bhutto with Trial if She Returns*, at <http://news.indiainfo.com/spotlight/mushabid/15bhutto.html> (April 15, 2002).

66. CNN, *Musharraf Plan to Bolster His Power*, at <http://www.cnn.com/2002/WORLD/asiapcf/south/06/26/pakistan.presidency/index.html> (June 27, 2002)[*hereinafter* "*Bolster Power*"].

67. *See* CNN, *Endorsing Musharraf's Ambition*, at <http://www.cnn.com/2002/WORLD/asiapcf/south/04/28/pakistan.musharraf/index.html> (April 29, 2002)[*hereinafter* "*Endorsing Ambition*"].

68. *Musharraf Rally*, *supra* note 63.

69. CNN, *Musharraf Won't Quit Army Chief Role*, at <http://www.cnn.com/2002/WORLD/asiapcf/south/04/16/pakistan.musharraf/index.html> (April 17, 2002). Yet, Musharraf also made clear that his run for President would not result in his relinquishing his position as army chief. *Id.*

President of Pakistan?"<sup>70</sup>

Although the Constitution itself remained in abeyance, the Supreme Court ruled that Musharraf's referendum was legal and constitutional.<sup>71</sup> Opponents to the referendum cited last minute, pro-Musharraf procedural alterations of rules governing *who* can vote and *where* votes can be cast, including the addition of polling places in such locales as hospitals, prisons, and gas stations.<sup>72</sup> Musharraf increased the number of polling stations, reduced the voting age, and softened the rules used to determine voter eligibility.<sup>73</sup>

Again no surprise, Musharraf sailed to victory, primarily due to a higher-than-expected turnout and an earned, or perhaps arrogated, tally of greater than ninety percent of all votes.<sup>74</sup> Specifically, election officials claim Musharraf captured 97.7% of the votes, and estimate a voter turnout greater than fifty percent, much larger than the estimated thirty-eight percent turnout for the parliamentary elections in 1997.<sup>75</sup>

Critics, however, have alleged voter fraud, have cited examples of multiple voting by the same voter and the acceptance of flimsy voter identification, and have excoriated Musharraf for using the "machinery of the state" to ensure his victory.<sup>76</sup> The independent Human Rights Commission of Pakistan videotaped what the organization purports to be people voting numerous times without showing identification.<sup>77</sup> Other critics claimed that stacks of ballots were summarily stamped as votes for Musharraf.<sup>78</sup>

Soon after victory, Musharraf again asserted his power by proposing changes to the Constitution that would grant him more power after the October elections.<sup>79</sup> One such grant consisted of an amendment that

70. CNN, *Musharraf Cruising to Poll Triumph*, at <http://www.cnn.com/2002/WORLD/asiapcf/south/04/30/pakistan.referendum/index.html> (May 1, 2002) [hereinafter "*Cruising to Poll Triumph*"].

71. CNN, *Pakistan Top Court Backs Musharraf*, at <http://www.cnn.com/2002/WORLD/asiapcf/south/04/27/pakistan.supreme/index.html> (April 27, 2002).

72. *Endorsing Ambition*, *supra* note 67 (emphasis added). See also CNN, *Musharraf Pledges Fresh Terror Crackdown*, at <http://www.cnn.com/2002/WORLD/asiapcf/south/05/02/pakistan.mush.speech/index.html> 1 (May 2, 2002) [hereinafter "*Terror Crackdown*"].

73. *Endorsing Ambition*, *supra* note 67.

74. See CNN, *Musharraf Cruises to Victory*, at <http://www.cnn.com/2002/WORLD/asiapcf/south/05/01/pakistan.referendum/index.html> (May 1, 2002).

75. *Terror Crackdown*, *supra* note 72.

76. See *id.* See also *Cruising to Poll Triumph*, *supra* note 70.

77. *Terror Crackdown*, *supra* note 72.

78. *Id.*

79. See *Bolster Power*, *supra* note 66.

would permit the president to fire the elected prime minister and cabinet, and personally appoint replacements.<sup>80</sup> The president would first need to consult a nine-member National Security Council that the president would chair.<sup>81</sup> Musharraf invited the public to comment for one month on the proposed changes, after which time the Federal Cabinet and National Security Council considered the responses.<sup>82</sup>

Additionally, Musharraf issued a decree that prohibits any person who has held the office of prime minister of Pakistan, or chief minister of a province, from seeking that office again, even if the full term had never been served.<sup>83</sup> Such a limit conveniently disqualifies both Bhutto and Sharif from running for Prime Minister in October 2002.<sup>84</sup>

In June 2002, Musharraf announced that he planned to permit the National Security Council to dismiss elected Parliaments, a power eliminated by his predecessor, Sharif, and that the president, ostensibly Musharraf, would have the power to appoint the chiefs of the army and navy.<sup>85</sup>

Musharraf contends that a strong Security Council would prevent abuses, avoid a hasty, irrational dismissal of Parliament,<sup>86</sup> "ensure a 'unity of command,' and [foster] a more sustainable democracy for [Pakistan]."<sup>87</sup> Opponents argue that a National Security Council would usurp the power of Parliament, a body elected by the people.<sup>88</sup> However, these changes automatically became law without the approval of Parliament, according to Musharraf, who insisted that the Supreme Court had granted him authority to implement such changes immediately.<sup>89</sup> Additionally, Musharraf unveiled a five-year fiscal plan that outlined proposed spending for projects such as dams and irrigation programs,

80. *Id.*

81. *Id.*

82. *Id.*

83. CNN, *Musharraf Bars Predecessors from PM Role*, at <http://www.cnn.com/2002/WORLD/asiapcf/south/07/07/musharraf.pm/index.html> (July 7, 2002).

84. See *id.* Pakistan's constitution does not include term limits for prime minister, but does limit the terms of president to two. *Id.* Musharraf also mandated that all political candidates hold a university degree. CNN, *Opposition Slams Musharraf Changes*, at <http://www.cnn.com/2002/WORLD/asiapcf/south/07/08/pakistan.decrees/index.html> (July 8, 2002).

85. See *Bolster Power*, *supra* note 66.

86. CNN, *Musharraf: 'Dozen' U.S. Troops in Pakistan*, at <http://www.cnn.com/2002/WORLD/asiapcf/south/07/12/pakistan.musharraf/index.html> (July 13, 2002) [hereinafter "*Dozen Troops*"].

87. See *Bolster Power*, *supra* note 66.

88. CNN, *Musharraf Consolidates Hold on Power*, at <http://www.cnn.com/2002/WORLD/asiapcf/south/08/21/pakistan.constitution/index.html> (August 22, 2002) [hereinafter "*Musharraf Consolidates*"].

89. *Id.*

efforts at eradicating poverty, and improving education.<sup>90</sup> Musharraf decreed that “[t]here needs to be a constant during this transition from military to democratic rule.”<sup>91</sup>

By August 2002, reports surfaced that Musharraf had claimed he recanted his proposal that would allow the president to dismiss the prime minister and appoint a replacement, but analysts determined that he could still achieve the same effect by dissolving the entire Parliament via the National Security Council.<sup>92</sup>

Despite Musharraf's political maneuvering during the summer of 2002, elections were, in fact, held in October 2002, as mandated by the Supreme Court. According to some, Musharraf's plan may have backfired.<sup>93</sup> By preventing Bhutto and Sharif from returning to Pakistan to enter the race for Prime Minister, a religious coalition party won a sizable forty-five of the 342 seats, having never before won more than five, and gained control of two of four provinces.<sup>94</sup> Musharraf's party wrestled only 118 seats, 54 seats fewer than required for a majority.<sup>95</sup> Factors other than Musharraf's maneuvers contributed to the religious coalition's large (by historical standards) victory; for example, the terrorist influence in the two provinces that the party won, both of which border Afghanistan and may harbor members or supporters of al Qaeda or the dissolved Taliban.<sup>96</sup>

Notwithstanding the disappointing outcome, a saving grace for Musharraf is the diverse nature of the religious coalition party; not all of its elected officials are radicals.<sup>97</sup> In fact, some are Islamic moderates, who unlikely will choose to upset the delicate power balance in Pakistan by causing a religious uprising.<sup>98</sup> Soon after the October elections, in which no party won enough seats to be dubbed the majority, the Parliament concentrated on the task of appointing a Prime Minister and selected Mir Zafarullah Jamali, former chief minister of Baluchistan province and a pro-government party member, for the much sought-after

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90. *Dozen Troops*, *supra* note 86.

91. *Musharraf Consolidates*, *supra* note 87.

92. *See id.* *See also* CNN, *Musharraf Promises 'Clean' Elections*, at <http://www.cnn.com/2002/WORLD/asiapcf/south/10/09/musharraf.election/index.html> (October 10, 2002).

93. The Washington Times, *Musharraf and the Mullahs*, at <http://www.washtimes.com/op-ed/20021021-24150264.htm> (October 21, 2002).

94. *Id.*

95. CNN, *Musharraf to 'Hand Over Power' Imminently*, at <http://www.cnn.com/2002/WORLD/asiapcf/south/11/20/musharraf.speech/index.html> (November 20, 2002).

96. *See* The Washington Times, *supra* note 93.

97. *See id.*

98. *Id.*

position.<sup>99</sup>

#### IV. Immediate Post-September 11th Events: Musharraf is Pressed into Service.

After the terrorist attacks in the United States on September 11, 2001, Musharraf needed to move quickly and strategically in order to pledge support to the United States and still maintain order within Pakistan's largely Muslim, and often anti-United States, population. In his address to the nation on September 19, 2001, he pledged intelligence, use of air space, and logistical support to the United States.<sup>100</sup> He began by alerting his constituents to the fact that the United States had the support of the United Nations Security Council.<sup>101</sup> Moreover, Musharraf warned that the United Nations passed a resolution that supported punishment for those committing terrorism and those harboring terrorists.<sup>102</sup> Recognizing the gravity of the situation and the critical role that the United States had asked Pakistan to play, Musharraf further warned that the wrong decision could lead to the harm of Pakistan's "critical concerns,"<sup>103</sup> such as its sovereignty, economy, strategic assets (specifically, nuclear weapons and missiles), and the Kashmir cause.<sup>104</sup>

Musharraf strategically decreed that the decision must be reached according to the teachings of Islam, as he is acutely aware of Pakistan's devout Muslim population.<sup>105</sup> Keeping Pakistan's demographics in mind, Musharraf clearly displayed to his people a concern and sympathy for the Taliban, the since-toppled ruling party of Afghanistan prior to September 11, 2001.<sup>106</sup> Musharraf conveyed that he believed offering support to the United States would best serve both Pakistan's and Afghanistan's interests.<sup>107</sup> The General then customarily asked for the peoples' trust, and for Allah to guide and protect them.<sup>108</sup>

Evident from Musharraf's speech, given just eight days after the

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99. CNN, *Coalition Deal Hits Musharraf*, at <http://www.cnn.com/2002/WORLD/asiapcf/south/11/05/pakistan.politics/index.html> (November 5, 2002).

100. DAWN, *Highlights of General Pervez Musharraf's Address to the Nation*, at <http://www.dawn.com/events/speech/20010919/index.htm> (September 19, 2001) [hereinafter "*Highlights*"].

101. *Id.*

102. *Id.*

103. *Id.*

104. *See id.*

105. *See Highlights*, *supra* note 100. *See also* Central Intelligence Agency, *supra* note 2 (listing Pakistan's Muslim population as ninety-seven percent of Pakistan's entire population).

106. *See id.*

107. *Id.*

108. *See id.*



terrorist attacks in the United States, was the need to balance Pakistan's support for the international community, led by the United States, with the Muslim values that dictate both the life of nearly every Pakistani and the political decisions of Musharraf. Because Musharraf's government inherently rests on unstable ground, and is technically unsupported by the Constitution, without widespread popular support, Musharraf risks being deposed, or worse, civil war.

Recently, Musharraf, in an address to the nation, proudly reiterated Pakistan's decision to aid the international coalition against terrorism and announced that "[b]y the grace of God Almighty our decision was absolutely correct."<sup>109</sup> However, he laments the fact that religious extremist parties within Pakistan vehemently opposed the decision.<sup>110</sup> Yet, in nearly the same breath, Musharraf commended the majority's efforts at frustrating the demonstrations.<sup>111</sup> Once again, Musharraf was seen engaging in a balancing act of gently condemning the opposition, while focusing more on praising those who serve Pakistan's best interests than on lambasting those constituents who, also in the name of Pakistan, incite anti-American riots and demonstrations.

#### V. Pakistan's Relationship with the Now-Defunct Taliban

Evidence of Musharraf's balancing act was no more apparent than in a recent interview, in which Musharraf conceded that Pakistan's environment is not necessarily conducive to a parliamentary democracy, but nonetheless asserted that the demands of the "whole world, particularly the United States, and of our own people," make an attempt at democracy "imperative."<sup>112</sup> Curiously, the General conveyed that he does not believe that "anyone in Pakistan . . . thinks we shouldn't have democracy."<sup>113</sup> As such, he believes that Pakistan has more than a "sporting chance" of succeeding.<sup>114</sup>

In light of the 2001 terrorist attacks on the United States, Musharraf

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109. See Web Site of the Islamic Republic of Pakistan, *English Rendering of General Pervez Musharraf's Address to the Nation*, at [http://www.pak.gov.pk/public/President\\_address.htm](http://www.pak.gov.pk/public/President_address.htm) (January 12, 2002)[*hereinafter* "*Address to the Nation*"]. Musharraf expressed his "profound grief" in February 2002 over the execrable killing of Wall Street Journal journalist Daniel Pearl by suspected terrorists. CNN, *Musharraf: 'Profound Grief' Over Pearl's Death*, at <http://www.cnn.com/2002/WORLD/asiapcf/south/02/21/musharraf.pearl/index.html> (February 21, 2002). He ordered the immediate apprehension of all involved in the appalling crime. *Id.* Musharraf then reiterated his vow to combat terrorism together with the international community. *Id.*

110. See *Address to the Nation*, *supra* note 109.

111. See *id.*

112. See *Insight on the News*, *supra* note 4.

113. See *id.*

114. *Id.*

took a diplomatic, yet staunchly pro-American position on what de Borchgrave dubs "cultural vandalism" by the Taliban in Afghanistan.<sup>115</sup> However, the General clearly blamed the United States' abandonment of Afghanistan, after the collaborative war to oust the Soviets, as the reason why a government like the Taliban could rise to power.<sup>116</sup> And yet, Musharraf denounced the Taliban's actions as an "ignorant, primitive interpretation of Islam that is condemned by the entire Islamic world."<sup>117</sup>

Notwithstanding Musharraf's disapproval of the Taliban's actions, he had attempted to support the Taliban insofar as was necessary to protect Pakistan's national interest and security, especially with an ongoing war with India plaguing his nation.<sup>118</sup> Musharraf tends never to sound too extreme, and thus when asked how to handle Osama bin Laden, who the Taliban refused to forsake, Musharraf suggested a compromise.<sup>119</sup> He proposed that an Islamic, three-judge panel be created and that any trial be held in an Islamic country chosen by the United States and Osama bin Laden.<sup>120</sup>

A constant concern of Musharraf, evident in his positions and his carefully chosen words, is the omnipresent possibility of dissention and conflict within Pakistan. After September 11, 2001, protests exploded throughout the country in opposition to the American strikes against Afghanistan.<sup>121</sup> In fact, thousands of Taliban supporters in Pakistan left the country destined for Afghanistan to aid the Taliban against the United States.<sup>122</sup> Considering the years of fighting with India over Kashmir, Musharraf indicated the need to keep a peaceful environment on its more stable western border.<sup>123</sup>

With the Taliban now defunct, Musharraf has teamed up with the new Afghan leader, Hamid Karzai, to "wipe out terrorism and terrorist sanctuaries in their nations."<sup>124</sup> The fledgling partnership appears solid and Musharraf has provided Karzai with ten million dollars to help

115. *See id.*

116. *See id.*

117. *Insight on the News, supra* note 4.

118. *See id.*

119. *See id.*

120. *Id.*

121. CNN, 'Trained Terrorists' Behind Pakistan Church Slayings, at <http://www.cnn.com/2001/WORLD/asiapcf/south/10/28/pak.christian.shooting/index/html> (Oct. 28, 2001) [hereinafter "Trained Terrorists"].

122. CNN, U.S. Commander, Pakistan Leader Discuss Afghan Situation, at <http://www.cnn.com/2001/WORLD/asiapcf/south/10/29/ret.attacks.pakistan/index.html> (Oct. 29, 2001).

123. *Insight on the News, supra* note 4.

124. CNN, Karzai, Musharraf Pledge to Fight Terrorism, at <http://www.cnn.com/2002/WORLD/asiapcf/central/04/02/musharraf.kabul/index.html> (April 2, 2002).

rebuild tattered Kabul and the rest of war-torn Afghanistan.<sup>125</sup> The best indication of a long-lasting collaboration between the two countries is evidenced by the leaders' propensity to refer to each other as "brother."<sup>126</sup>

## VI. Recent Developments with Archival India

While the western border appears relatively pacific, it is Pakistan's eastern border that certainly concerns Musharraf the most, although the General continues to maintain a positive outlook.<sup>127</sup> After talks with Indian Prime Minister Atal Behari Vajpayee in July 2001 yielded little in the way of a concrete agreement, Musharraf declared: "'The hope I have [now is that] I feel nobody can stop this (peace) process from moving forward.'"<sup>128</sup> The General added that he "'went to the summit with a very sincere search for peace. [He] went to close the chapter of hostility, mistrust, and suspicion. [He] went for peace. . . .'"<sup>129</sup>

Musharraf later theorized that India's stronghold in the Muslim-majority Kashmir region is the only issue preventing "normalize[d] relations" between India and Pakistan.<sup>130</sup> The General stressed that he "'return[ed] empty handed but [is] not disappointed because there was tremendous goodwill and. . . the resolve to carry forward [with] the. . . process.'"<sup>131</sup> In keeping with his positive attitude toward the talks, Musharraf added that "'[w]e had substantial progress at Agra and we need to pick up the threads from there.'"<sup>132</sup>

With both countries now equipped with nuclear weapons, which each country boldly tested in 1998,<sup>133</sup> Musharraf's positive attitude is a welcome relief to an increasingly fragile international landscape. Sanctions imposed by the United States, such as the United States' steadfast refusal to deliver a group of F-16 fighters for which Pakistan has already paid, persisted as punishment for the weapons tests

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125. *See id.*

126. *See id.*

127. *See* CNN, *Musharraf Says Peace Process Will Continue*, at <http://www.cnn.com/2001/WORLD/asiapcf/south/07/21/agra.summit/index.html> (July 21, 2001)[*hereinafter* "Peace Process"].

128. *Id.*

129. *Id.*

130. *Id.* Approximately 33,000 people have died in twelve years of fighting over the disputed Kashmir region. CNN, *Musharraf to India: 'We want friendship,'* at <http://www.cnn.com/2002/WORLD/asiapcf/south/04/01/pakistan.india/index.html> (April 1, 2002)[*hereinafter* "We Want Friendship"].

131. *Peace Process*, *supra* note 127.

132. *Id.*

133. *See* CNN, *Pakistan Offers Nuclear Test Ban*, at <http://www.cnn.com/2001/WORLD/asiapcf/south/11/10/gen.pakistan.mushoffer/index.html> (Nov. 10, 2001).

conducted just before Musharraf wrestled control from Prime Minister Sharif.<sup>134</sup> Musharraf warned that the refusal to deliver the fighters has resonated negatively throughout Pakistan, resulting in increased anti-American sentiment.<sup>135</sup>

In anticipation of the upcoming meeting at Agra with Prime Minister Vajpayee in July 2001, the General strategically appointed himself president, a move that gave Musharraf increased power and birth to many a furrowed brow.<sup>136</sup> Had the appointment been made pursuant to Pakistani's Constitution, the move largely would be considered ceremonial because the president is somewhat of a mere figurehead under the Constitution.<sup>137</sup> But, because the Constitution remained in abeyance, and both the powerful Prime Minister position and Parliament had been dissolved after the coup, Musharraf also decided to create a new National Security Council as a substitute governing body for the expelled Parliament.<sup>138</sup> The new Council afforded Musharraf more power as President, much to the chagrin of those determined to hold Musharraf to the Supreme Court order to return Pakistan to democracy by October 2002.<sup>139</sup> Immediately, the new President attempted to quell those fears and asserted: "The international community should understand that the question here is not to *return* the country to democracy, but [to *establish*] democracy in Pakistan."<sup>140</sup> Musharraf insisted that the country continue to follow the path toward democracy, but instructed that his self-promotion to president is indeed in Pakistan's national interest.<sup>141</sup>

Aside from the debacle that Musharraf caused with his self-appointment to president just before his meeting with Pakistan's nuclear foe India, Musharraf recently tempted his Indian enemies by stating that Kashmir "runs in our blood" and that "we will never budge an inch from

134. CNN, *Pakistani Leader 'Not At All Worried' About His Survival*, at <http://www.cnn.com/2001/WORLD/asiapcf/south/11/11/ret.musharraf.statement/index.html> (Nov. 11, 2001) [*hereinafter* "Leader Not Worried"].

135. *Id.*

136. See CNN, *Musharraf Committed to Democracy*, at <http://www.cnn.com/2001/WORLD/asiapcf/south/06/20/pakistan.musharraf/index.html> (June 20, 2001).

137. CNN, *Pakistani President Expands His Powers*, at <http://www.cnn.com/2001/WORLD/asiapcf/south/07/04/pak.musharraf/index.html> (July 4, 2001).

138. *See id.*

139. *See id.*

140. See CNN, *Musharraf Rules Out Early Elections*, at <http://www.cnn.com/2001/WORLD/asiapcf/south/06/29/pakistan.musharraf.elections/index.html> (June 29, 2001) (emphasis added).

141. *See id.*

our principle stand on Kashmir.”<sup>142</sup> Musharraf is quick to condemn terrorism of any kind and slyly reminded India of the words of their own Prime Minister Vajpayee, who concluded that “mind-sets will have to be changed and historical baggage will have to be jettisoned.”<sup>143</sup> Yet, in nearly the same breath, Musharraf reminded India of Pakistanis’ willingness to “spill [their] last drop of blood” defending Pakistan.<sup>144</sup> Such iteration occurs almost daily, and often includes conflicting statements from the same leader, perhaps a result of the enormous consequence words can have when two nuclear powers are embroiled in a contest of wills, historical and religious profundity, and international viability. Neither side wishes to appear too terroristic or too placid. With nearly one million troops now congregated on the “Line of Control” in Kashmir, and three wars between each other since 1947 (two of which were fought over Kashmir), the two sovereigns are engaged in a constant, nearly consuming struggle, both physical and communicative.<sup>145</sup> Historically, as soon as the world braces for potential nuclear war between the two disputants, calmer minds prevail, and a concession occurs.

Less than a month after India blamed Pakistan for a December 17, 2001 suicide attack on India’s Parliament, Musharraf declared war on extremism and terrorism.<sup>146</sup> Musharraf’s declaration was a nod to his old foe, a nod indicating that his hands were neither hovering over the nuclear trigger nor patting the backs of terrorists. Musharraf next banned several of the most militant terrorist groups as a show of good faith.<sup>147</sup> “Sincerely, we want friendship,” offered Musharraf.<sup>148</sup> India, unimpressed, demanded that Musharraf extradite over twenty suspected terrorists to India, a demand Musharraf promised will remain unfulfilled.<sup>149</sup> “We have our law, we will try them here,” stressed Musharraf.<sup>150</sup> Musharraf repeatedly has denied offering any type of aid to suspected terrorists in the Kashmir region, but has admitted, readily and often, that Pakistan gives “moral support” to Kashmir inhabitants fighting a “freedom struggle” against India.<sup>151</sup> This claim no doubt

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142. See *Address to the Nation*, *supra* note 109.

143. *Id.*

144. *See id.*

145. See CNN, *Musharraf: Next Move Up to India*, at <http://www.cnn.com/2002/WORLD/asiapcf/south/01/19/gen.musharraf.tensions/index.html> (January 19, 2002).

146. *See id.*

147. *We Want Friendship*, *supra* note 130.

148. *Id.*

149. *See id.*

150. *Id.*

151. CNN, *Musharraf Tries to Quell Nuclear War Fears*, at <http://www.cnn.com/2002/WORLD/asiapcf/south/06/01/pakistan.india/index.html> (June

enrages an India that hears, in one instance, about Pakistan's war on extremism, and in the next instance, about moral support provided to suspected terrorists in Kashmir.

In May 2002, the contest escalated again shortly after an Indian army camp lost thirty people in an attack within Kashmir.<sup>152</sup> Days later, Musharraf asserted that his "entire nation is with the armed forces and will shed the last drop of their blood but will not allow any harm to come to [Pakistan]."<sup>153</sup> Yet, he also conceded that Pakistan would not initiate a war with India unless Pakistan's honor and dignity is threatened.<sup>154</sup> This type of political doublespeak, riddled with contradictions and conditions, has become the accepted method of communication between the two in their clash for control over Kashmir.

By the middle of 2002, India boasted of its pledge not to be the first to strike with nuclear weapons, yet Pakistan may have fallen short of making such a pledge by attaching conditions.<sup>155</sup> Musharraf contended that Pakistan has gone even further than pledging a "no first strike" plan.<sup>156</sup> According to Musharraf, Pakistan has called for a "no war pact" with India and has proposed the denuclearization of South Asia and a reduction of forces, a pact India has rejected.<sup>157</sup>

## VII. The View from the United States

Despite these apparent "no first strike" and "no war pact" proposals, war still rests not only on the forefront of the minds of Indians and Pakistanis, but on the Western mind as well. Tellingly, the United Nations ordered the evacuation of the families of its staff in both Pakistan and India in May 2002 after three separate grenade attacks by ostensibly Islamic militants in Kashmir.<sup>158</sup> The United Nations' order came after the United States' State Department advised its sixty thousand citizens in India to leave the area, and stated that "the risk of intensified military hostilities between India and Pakistan cannot be ruled out."<sup>159</sup>

As for Musharraf's political shuffling, the United States viewed Musharraf's self-appointment to the presidency in June 2001 as a step

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1, 2002)[hereinafter "*Nuclear War Fears*"].

152. CNN, *Restraint Urged After Musharraf Speech*, at <http://www.cnn.com/2002/WORLD/asiapcf/south/05/27/india.pakistan/index.html> (May 27, 2002).

153. *Id.*

154. *Id.*

155. *Id.* See also *Nuclear War Fears*, *supra* note 151. Musharraf announced that "the avoidance of war cannot come at the cost of compromising our honor and dignity."

156. *Nuclear War Fears*, *supra* note 151.

157. *Id.*

158. *Id.*

159. *Id.*

away from democracy, rather than one that will foster advancement toward democracy.<sup>160</sup> In fact, the United States' State Department went so far as to assert that the General's ascension to the presidency "'severely undermine[d] Pakistan's constitutional order and casts Pakistan as a country ruled by decree rather than by democratic process.'"<sup>161</sup> Yet, the White House largely has acquiesced to Musharraf's power moves, including his April 2002 referendum, which assured that his militaristic dictatorship would survive the mandated October 2002 elections, disturbing critics who have urged that the United States demand a no-detour march to democracy.<sup>162</sup>

On the other hand, India formally congratulated Musharraf on his promotion and Indian officials trivially mentioned that it solved the problem of how to address a visiting chief executive, rather than a "President" or "Prime Minister."<sup>163</sup> Pakistani Foreign Minister Jaswant Sattar even suggested that the world judge the leaders of Pakistan on their performance, rather than on other, superficial factors.<sup>164</sup> Musharraf reassured the world that "[t]he supreme court order, supreme court judgment, of holding elections in October 2002 is very clear. . . We will abide by that."<sup>165</sup>

What must be most vexing for Musharraf is that to which Sattar eluded: his track record. While Musharraf may have suspended the Constitution, a move that no doubt looks bad to a western world heavily bent on all countries moving speedily toward democracy, his government has not even shown a "whiff of corruption."<sup>166</sup> At the very least, Musharraf has made substantial economic advances for Pakistan, with 2001 on target to have a fiscal deficit below six percent of gross domestic product, a percentage that is the lowest in eighteen years.<sup>167</sup>

Saddled with nearly forty billion dollars of foreign debt, Pakistanis

160. See CNN, *U.S. Condemns Pakistan Presidency Move*, at <http://www.cnn.com/2001/WORLD/asiapcf/south/06/20/pakistan.usa/index.html> (June 20, 2001)[*hereinafter* "U.S. Condemns"].

161. *Id.*

162. CNN, *Musharraf: India Stockpiling Weapons*, at <http://www.cnn.com/2002/WORLD/asiapcf/south/09/12/pakistan.india/index.html> (September 12, 2002).

163. See CNN, *Commonwealth Dismay at Musharraf Presidency*, at <http://www.cnn.com/2001/WORLD/asiapcf/south/06/22/pakistan.president/index.html> (June 22, 2001).

164. *U.S. Condemns*, *supra* note 160.

165. CNN, *Criticism Mounts for Musharraf*, at <http://www.cnn.com/2001/WORLD/asiapcf/south/06/21/pakistan.pres.reax/index.html> (June 21, 2001).

166. See CNN, *Musharraf's Economic Turnaround*, at <http://www.cnn.com/2001/WORLD/asiapcf/south/06/20/pakistan.economy/index.html> (June 20, 2001)[*hereinafter* "Economic Turnaround"].

167. *Id.*

have a near-tangible memory of the corrupt and inefficient governments of Prime Ministers Benazir Bhutto and Nawaz Sharif.<sup>168</sup> According to Musharraf, “Pakistan faced serious setbacks in every sector due to blunders made by previous leaders,” referring to Bhutto and Sharif, who he claims “fanned the politics of hatred and indulged in political vendetta” while at the helm.<sup>169</sup> Yet, many Pakistanis fear, perhaps without justification, that a march to democracy may precipitate a return to economic disorder.<sup>170</sup>

#### VIII. Musharraf's Role in the Ongoing War Against Terrorism.

As of April 2003, the global hunt for Osama bin Laden continues, with the realization that bin Laden has proven elusive and may have slipped into Pakistan from Afghanistan. Musharraf, coping with his newfound notoriety as a staunch American ally in the new war, now must consider the possibility that bin Laden and his minions are treasuring refuge in western Pakistan. While Musharraf has shown every indication of his commitment to assist, as necessary, in tracking down bin Laden, the United States is far too aware of the opposition that Musharraf is likely to face from his constituents if the war should move into Pakistan.<sup>171</sup> General Franks asserts his confidence that the General is committed to the task, and to the United States.

Notwithstanding his concern over the war in Afghanistan and its potential repercussions, Musharraf remains confident in regard to his leadership and popularity among Pakistanis, and claims that he is “not at all worried” about anti-American and pro-Taliban protests that many believe could lead to his downfall.<sup>172</sup> In fact, General Tommy Franks, Chief of United States Central Command in the war against terrorism, having met Musharraf personally, praised Musharraf as “a good man and a good leader for his people.”<sup>173</sup> Yet an astute Aaron Brown, CNN anchor of *NewsNight*, posed what might be the most appropriate question of all: if bin Laden is indeed in Pakistan, will Pakistan permit the United States to retrieve him?<sup>174</sup> All indications are that the answer is yes, so long as Musharraf fulfills his promise. However, if Musharraf should refute the data depicting bin Laden in Pakistan, or outright refuse entry into Pakistan by the allied forces, then Brown's question becomes all the more important.

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168. *Id.*

169. *Indiainfo.com*, *supra* note 65.

170. *See Economic Turnaround*, *supra* note 166.

171. *See Trained Terrorists*, *supra* note 121.

172. *Leader Not Worried*, *supra* note 134.

173. *NewsNight with Aaron Brown* (CNN broadcast, Jan. 11, 2001).

174. *Id.*



## IX. The Role of the United Nations.

Should Musharraf suddenly become uncooperative in the hunt for bin Laden, many will look to the United Nations to issue a strong message to Musharraf and to Pakistan. First, according to the Charter of the United Nations, one of the purposes of the United Nation's is to "maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to peace. . . ." <sup>175</sup> Second, the Charter further confers a self-defense power upon any country that is attacked by way of decree that states: "Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations. . . ." <sup>176</sup> Third, the Charter provides that Members must "make available. . . armed forces, assistance, and facilities, including rights of passage, necessary for the purpose of maintaining international peace and security." <sup>177</sup> These three clauses provide the United Nations, including the United States, with what appears to be the necessary authority to retrieve bin Laden within the borders of Pakistan.

Even more empowering for the United Nations, however, is a fourth provision that allows for it to "enjoy in the territory of each of its Members such legal capacity as may be necessary for the exercise of its functions and the fulfillment of its purposes." <sup>178</sup> Further, "representatives of the Members of the United Nations. . . shall similarly enjoy, [in the territory of each of its Members,] such privileges and immunities as are necessary for the independent exercise of their functions in connection with the Organization." <sup>179</sup> Certainly, Musharraf, as President of a member-state of the United Nations, <sup>180</sup> must comply, according to these provisions of the Charter, with any attempt by the United Nations to retrieve Osama bin Laden. <sup>181</sup>

Perhaps most importantly, Musharraf must contend with the same United Nations' resolution passed shortly after the attacks on the United States, which calls for global cooperation and deems any country that harbors a terrorist as one that fosters terrorism. <sup>182</sup> The resolution sends a

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175. U.N. CHARTER art. 1, para. 1.

176. U.N. CHARTER art. 51.

177. U.N. CHARTER art. 43, para. 1.

178. U.N. CHARTER art. 104.

179. U.N. CHARTER art. 105.

180. Pakistan became a Member of the United Nations on September 30, 1947. See United Nations, *Member States*, at <http://www.un.org/Overview/unmember.html> (last visited Dec. 16, 2001).

181. Pakistan accepts compulsory ICJ jurisdiction, but does so with reservations. See Central Intelligence Agency, *supra* note 2.

182. G.A. Res., U.N. GAOR, 56<sup>th</sup> Sess., U.N. Doc. A/RES/56/1 (Sep. 18, 2001). The Resolution adopted by the General Assembly, entitled *Condemnation of Terrorist Attacks*

clear message to leaders, such as Musharraf, who have, in some instances, nurtured relationships with extremist governments, such as the Taliban, instead of renouncing them. The resolution also serves as a clear sign to Musharraf that mere acquiescence is forbidden, and that he must actively ascertain whether terrorist cells do exist within the borders of Pakistan.

Musharraf continues to insist that he doubts bin Laden has crossed the border into Pakistan.<sup>183</sup> In fact, as of April 2003, the United States still does not know the whereabouts of the world's most wanted terrorist. This uncertainty places Musharraf in the unenviable position of having to disprove what may, in fact, be a negative; that is, that bin Laden continues to hole up in Afghanistan or elsewhere and has not transformed an unwitting Pakistan into a harbinger of terrorists.

With full United Nations backing, the operation to eliminate organized terrorist cells could become quite a headache for Musharraf. Musharraf has indicated his reluctance to fight a two-front war; the sooner bin Laden is captured, the sooner Musharraf can redouble his efforts on Pakistan's Kashmir (eastern) border with India. Musharraf's preference for singleness of purpose may well have been the trait that drove him to maintain a relationship with the Taliban when no other country would recognize the brutal leaders.<sup>184</sup> With the Taliban having been recently toppled, Musharraf must decide whether to use his own troops to continue to search for bin Laden within Pakistan, and contemplate the role he may be compelled to play as the hunt for bin Laden escalates.

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in the United States of America, provides:

The General Assembly,

Guided by the purposes and principles of the Charter of the United Nations,

1. *Strongly condemns* the heinous acts of terrorism, which have caused enormous loss of human life, destruction and damage in the cities of New York, host city of the United Nations, and Washington, D.C., and in Pennsylvania;
2. *Expresses its condolences and solidarity* with the people and Government of the United States of America in these sad and tragic circumstances;
3. *Urgently calls* for international cooperation to bring to justice the perpetrators, organizers and sponsors of the outrages of 11 September 2001;
4. *Also urgently calls* for international cooperation to prevent and eradicate acts of terrorism, and stresses that those responsible for aiding, supporting or harbouring the perpetrators, organizers and sponsors of such acts will be held accountable.

*Id.* Musharraf recently requested payback for his role in the United States' new war. Specifically, the General asked that the United States play an "active role" in fostering peace in the Kashmir dispute and monitoring Indian terrorism and human rights violations. See *Address to the Nation*, *supra* note 109.

183. See *News at Ten* (WB broadcast, Jan. 18, 2002).

184. See *Insight on the News*, *supra* note 4.

## X. Conclusion

What has become clear regarding the war against terrorism is the relief that undoubtedly awaits Musharraf upon the news of bin Laden's death or capture. In what may amount to wishful thinking, Musharraf recently has been quoted suggesting that bin Laden may already be dead.<sup>185</sup> Even though Musharraf undoubtedly has heightened his credibility and the legitimacy of his administration in the eyes of the western world by assisting the United States, the global search for terrorists and the threat of force against those countries that harbor terrorists, likely has caused Musharraf significant stress as well. There is no way to know whether bin Laden truly may be within Pakistan, a suggestion that must strike fear within Musharraf. Continued tensions in the Kashmir region have sapped Pakistan's resources enough, notwithstanding the efforts of Pakistan in attempting to seal up the Pakistan-Afghanistan border from fleeing Afghan refugees.

Even considering these challenges, Musharraf essentially has fulfilled his promise to transform Pakistan into a democracy by October 2002. Musharraf is not necessarily faced with a choice between the two extremes; that is, of resigning as President and Chief Executive, which would be hailed as democratic, and continuing to trot toward democracy with a tight grasp on the reigns, viewed by many as dictatorial. Rather, the more efficient outcome, and the one that occurred in October 2002, would see Musharraf as President within the new democratic government in order to achieve the smoothest transition.

With no confirmed corruption witnessed to this point in his administration, Musharraf at least deserves high marks for cleaning up after Sharif and Bhutto's heavily corrupt administrations. In fact, Musharraf only accepts the salary he earned as army chief before the coup, and still nobly insists on using commercial flights for foreign trips.<sup>186</sup> Further, Musharraf has proven to be the most rare, yet often most effective, of breeds: a benevolent dictator; especially rare in the sense that he arrived in power after a lengthy and storied military career.

All things considered, the world could be saddled with a much more frightful proposition than to have a leader such as Musharraf as President and Chief Executive of turbulent Pakistan. Whether Musharraf converts the Republic into a democracy by any superficially mandated deadline should not be the focus of those concerned with Pakistan's future. Rather, emphasis should be placed on whether Musharraf is advancing

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185. See CNN, *Karzai, Musharraf Pledge to Fight Terrorism*, at <http://www.cnn.com/2002/WORLD/asiapcf/central/04/02/musharraf.kabul/index.html> (April 2, 2002).

186. *Spaeth, supra* note 13.

the Muslim state *towards* democracy in a manner that will allow the yet unborn democratic government to govern successfully. Almost the entirety of the evidence indicates that Musharraf is accomplishing just that.

For its part, the United States, and other concerned countries, ought to work closely with Musharraf in developing the necessary requisites in order to continue to assist the transformation of a politically unstable country into one with a solid foundation upon which a long-lasting and successful democracy might rest. Part of the United States' agenda should include, however, a closer look at Musharraf's efforts, some of which are lacking, at curing the ritualistic and traditional societal ills, such as violence and subjugation of women, despite what appear to be administration successes at wiping out governmental corruption.

Having risen to the occasion in the war against terrorism, despite vociferous domestic opposition from religious extremists, Musharraf at least deserves every opportunity to accomplish, even if via oft-dictatorial means, the praiseworthy goals he has outlined. This rings especially true considering his leadership of a country that will play an ever-increasing role in global affairs as the war against terrorism likely continues throughout this decade. Finally, Musharraf exhibits the rarely seen intrepidity to challenge the Islamic world to escape their morbid reality: *"Today we are the poorest, the most illiterate, the most backward, the most unhealthy, the most un-enlightened, the most deprived, and the weakest of all the human race."*<sup>187</sup> These sentiments, if spoken by a Westerner, would border on the epithetical. Yet spoken by Musharraf, this mindset instills confidence in a frail and shaken international community that craves a level-headed leader such as Musharraf, angry at the plight of his people and perhaps destined to instill democracy, in one of the most tumultuous regions of the world.

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187. BBC News, *Musharraf Berates Muslim World*, at [http://news.bbc.co.uk/1/hi/world/south\\_asia/1824455.stm](http://news.bbc.co.uk/1/hi/world/south_asia/1824455.stm) (February 16, 2002). Musharraf made these weighty comments in an address to a science and technology conference attended by ministers of Muslim countries. "[T]he time ha[s] come," instructed Musharraf, "for Islamic nations to take part in collective self-criticism" or "always be perceived as backward, illiterate – those who only indulge in extremism and violence." *Id.*

